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Current Publications

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CHINA AND THE FOREIGN POWERS: THE IMPACT OF AND REACTION TO UNEQUAL TREATIES. By: William L. Tung, Professor of Political Science, Queens College, The City University of New York. Oceana Publications, Inc., 1970. $15.00, *by* **Stuart S. Malawer**

With the recent historical developments in Sino-American relations in mid-1971 and the recent conclusion of the Vienna Convention on the Law of Treaties in 1969, that declared unlawful all coerced treaties, this book is very timely for both the international relationist and the international lawyer.

Professor Tung presents an analytical description of the substance of the unequal treaties that have been imposed upon China since the mid-nineteenth century. The author considers the Treaty of Nanking of 1842, which terminated the Opium War, as the treaty that "set the precedent for unequal treaties in China." (p. 7.) Treaty relations between China and the world powers since that date have not been established on the principle of equality and reciprocity. The history of Chinese foreign relations in the nineteenth and twentieth centuries has been the history of the impact of imposed treaties on China and China's reaction to them.

The author contends that through the threat and use of military and economic force China was coerced into making territorial concessions and granting extraterritorial jurisdiction. The latter leading to the establishment of foreign courts in China, including the United States Court for China. The reaction of the Chinese to these developments has been reflected in their longstanding opposition to imperialism, an attitude specifically directed against the Western states and Japan.

Professor Tung argues that the Chinese Government attempted to counter the imposed treaties by diplomatic techniques. In order to renegotiate these treaties the Chinese resorted in the inter-war period to both multilateral and bilateral approaches. This diplomacy had some success. However, toward the end of World War II the Yalta Agreement imposed terms on China and seemingly frustrated both her interwar and war-time diplomacy.

China has traditionally refused to be bound by treaties to which she had not freely consented. China's inter-war policy and her opposition to the Yalta Agreement has played a significant role in forming a new rule of treaty law emerging in 1969 as the codification of state practice in article 52 of the Vienna Convention on the Law of Treaties, declaring

unlawful coerced treaties. It is unfortunate that the author only discusses the content of modern Chinese treaty relations and not its impact on the development of this rule of law. Elucidation upon the impact of Chinese treaty relations on the development of a new rule of treaty law would have been both significant and original. An analysis of China's opposition to the Yalta Agreement and its opposition to the continued existence of the older Sino-Soviet treaties would certainly have clearly evidenced the development of this new rule against coerced treaties and the traditional Chinese attitude that all treaties formed as a result of any coercion are unlawful. The Chinese contend that treaties formed by the threat or use of military force ("imposed treaties") and treaties formed as a result of the threat of use of any force ("unequal treaties") are both "coerced treaties" and are unlawful under treaty law.

Despite the above shortcoming, Professor Tung develops a very significant theme—that as a consequence of imposed treaties China should resort to "pacific means to settle outstanding disputes with other states," (p. 11.) "but will strongly react to any confrontations if unavoidable." (p. 410.) The author's theme is given great creditability when one recalls Tibet and the recent border clashes with both India and the Soviet Union. Professor Tung presents the reader with a very careful traditional, legal-historical analysis of modern Chinese treaty relations, and it is strongly recommended both to the international relationist and to the international lawyer.

THE COSTS OF ACCIDENTS: A LEGAL AND ECONOMIC ANALYSIS. By Guido Calabresi. New Haven and London: Yale University Press. 1970. Pp. x, 340. $10.00.

Mr. Calabresi has developed a basis for evaluating the different systems of accident law. The book is a combination of economic analysis and legal policy and their relation to accident law.

An excellent background is set forth in Part I of the book, wherein the reader is brought up to date on the principal goals in insurance and accident law. Calabresi considers the two fundamental problems that are common to all systems of accident law. They are: (1) who should be held responsible for accident costs and (2) how should they be evaluated. In Parts III and IV of the book, Mr. Calabresi examines and finds the fault system wanting on the grounds of both cost reduction objectives and fairness. Part V, "Justice and the Fault System" the author discusses the need of substituting another system of accident

law and points out the factors that critics and the public seem to focus on when they consider whether any system of accident law is fair.

DEVELOPING LABOR LAW: THE NATIONAL LABOR RELATIONS ACT, THE BOARDS AND THE COURTS. Editor-in-Chief, Charles I. Morris, co-editors George E. Bodle and Jay S. Siegel. Washington, D.C.: The Bureau of National Affairs, Inc. 1971. Pp. L, 1054. $24.85.

The basic objective of this book is to analyze the National Labor Relations Act; however, in the first chapter an excellent summary of the Wagner Act of 1935, as amended by the Taft-Hartley Act of 1947 and the Landrum-Griffin Act of 1959 has been inserted to give the reader a brief background in the history of labor law. The emphasis of the thirty-two chapter book is upon the construction of the Act by the National Labor Relations Board and the courts. Other major divisions of the book are devoted to the following topics: employee rights, the representation process, economic activity of the unions through strikes, boycotts, relations between the employee and the union, and the administration of the Act.

Part VII, "Administration of the Act," sets forth the jurisdiction of the Act and what procedures are followed by the N.L.R.B. in terms that both practicing attorney and student can comprehend.

Professor Morris and his committeemen have accomplished a monumental task by clearly and adequately tracing the history of this law to date. The book definitely meets a long felt need in the labor relations field; and is, the product of the combined labor of some sixty prominent specialists in the labor relations field. Practically all of the men who worked on the book are members of the section of Labor Relations Law of the American Bar Association.

PROSECUTION: THE DECISION TO CHARGE A SUSPECT WITH A CRIME. By Frank W. Miller. Boston: Little, Brown and Company. 1969. Pp. xviii, 366. $12.50.

This book explores the prosecutor's responsibility and authority to charge a suspect, and the criteria by which the determination to charge is made. In Part I, the author discusses the actual involvement of the prosecutor in the charging process.

Part II of the book, "Separation of the Guilty from the Innocent – Evidence Required to Charge," analyzes the sufficiency of the evidence of guilt so as to justify making the initial charge. Mr. Miller, in Part III,

covers the judicial involvement needed in the charging process. There is a continued emphasis on the sufficiency of evidence in this selection and it is accomplished largely through the study of the preliminary examination.

The thirteen chapters in Part IV deal with the question of where the prosecutor's discretionary boundaries should end and where the legislative authority should begin. Several of the chapters in the last part of the book are concerned with reasons for not proceeding further in charging a suspect. For example, in chapter twelve the negotiated plea, commonly referred to as "plea bargaining" is discussed. It is made clear that the practice of making concessions to a suspect for a plea of guilty to a lesser charge will reduce the cost of the system by obviating a formal trial on the question of guilt. Chapter thirteen gives reasons for not fully charging a suspect because of the harmful effect it may have on him.

It should be noted that Professor Miller's observations are based on data obtained from the municipal, state, and federal jurisdictions of Michigan, Kansas and Wisconsin. The book also contains numerous footnotes and case references.

THE LAW OF AIR POLLUTION CONTROL. By Sidney Edelman. Stamford, Conn.: Environmental Research and Applications, Inc. 1970. Pp. vi, 296. $18.50.

This eight chapter book compiled by Mr. Edelman, who is an Assistant General Counsel for the Department of H.E.W., covers both private and governmental action that can be taken to abate air pollution as a common law nuisance. Perhaps one of the most significant aspects of the book is the appendices at the end of each chapter. Essentially, each appendix lists several cases which are discussed in detail and which are related to the topic in the particular. In addition to the appendices, the footnoting system used in each chapter will help the reader to research the legal matters touched upon in the text of each chapter. The book also is an excellent treatment of the police powers that are needed in conjunction with control of air pollution. Another topic of considerable interest relating to the environmental problems discussed by Mr. Edelman is the need for legislation declaring the emmission of smoke a public nuisance.

In view of the increasing emphasis on air pollution control and the inevitability of widespread governmental action under the Clean Air Act as amended by the Air Quality Act of 1967; this book serves as a review of the law in the field of air pollution control affecting both individual rights and governmental authority. It is offered as an aid to a

better understanding of the role of the law in the development and implementation of social policy.

WHAT LAWYERS REALLY DO: PRACTICING ATTORNEYS TALK ABOUT THEIR LIFE AND WORK. By Bernard Asbell. New York: Van Ress Press. 1970. Pp. xiii, 114. $3.95.

The author has chosen an interesting method of demonstrating practical aspects of the legal profession through those who are actively engaged in legal practice.

His work consists of six legal case histories. The presentation makes the work enjoyable and easy to read. The histories present the likes and dislikes of each involved attorney-a small town family lawyer; a partner in a Wall Street law firm; a house counsel employed by a large corporation; a defense attorney in criminal law; a prosecutor; and an attorney experienced in providing legal services to the poor.

As the author's preface states: "The people whose conversation appears on these pages were chosen not only for what they do, but for their willingness to talk about it frankly, in detail, telling of the sour as well as the sweet, and leaving out the plastic . . . I asked only for practical experience, authentic thoughts and feelings about his work, so that the reader might come close to living through the same experience himself or at least try them on, so to speak, for size."

Mr. Asbell's study has succeeded in providing an entertaining and enlightening preview of what to expect if you want to practice law.

THE LOST ART OF CROSS-EXAMINATION. By J.W. Ehrlich. New York: G. P. Putnam's Sons. 1970. Pp. 192. $5.95.

The average course given in evidence at most law schools can only dedicate a small portion of time to the class study of cross-examination. Mr. Ehrlich in this book has given the law student as well as the trial attorney a useful tool that could only have been written by a person with years of experience. Among the topics discussed in the book are: the object of cross-examination, mental functions of the witness, the eyewitness, trial by jury, tests of credibility, identification of evidence and invented evidence.

Besides discussing many of the finer details of cross-examination, Ehrlich also summarizes a few cases he had that were won by his method of cross-examination. In the chapter, "The Billy Holiday Case," he demonstrates to the reader how he managed to introduce at the trial

evidence by cross-examination of a witness which completely changed the outcome of this case.

THE LAW OF COMPUTERS. Edited by Grace W. Holmes and Craig H. Norville. Ann Arbor, Michigan: Institute of Continuing Legal Education, Hutchins Hall. 1971. Pp. XV, 332. $25.00.

Some time ago, the Institute of Continuing Legal Education sponsored a seminar on the law of computers, and this book is a codified and condensed version of the materials and thoughts presented at the seminar.

Starting with an article entitled "The Computer, its function and place in modern society," the editors have included articles concerning many diverse and informative applications of the use of computers in dealing with legal problems.

FEDERAL CIVIL RIGHTS ACTS: CIVIL PRACTICE. By Chester J. Antieau. Rochester, N.Y., N.Y.: The Lawyers Co-operative Publishing Company. 1971. Pp. xii, 372. $27.50.

The book is a useful and concise overview of the various federal civil rights acts from the civil practice point of view as opposed to the criminal aspect of such acts.

Taking each act separately, Mr. Antieau presents a general interpretation of the act, then gives the practical application of these laws including the form of complaint that should be used when filing for relief under the act.

This work is heavily annotated with references to the code sections as well as to the cases illustrating and interpreting the act. The student, as well as the practitioner, has here a ready reference and handbook on the law of civil rights.

JUSTICE AND EQUALITY. Edited by Hugo A. Bedau. Englewood Cliffs, New Jersey: Prentice Hall, Inc. 1971. Pp. v, 185. $6.95.

This book is a collection of essays which explore the concepts of justice and equality. The first essay is entitled "Justice" by Aristotle and it presents a classic discussion of a wide range of problems, wherein Aristotle presents his own meritarian theory of justice.

The authors of the next three essays are Thomas Hobbes, John Stuart Mill and David Hume. Their writings are based on the modern,

liberal and utiliatarian concepts of justice. One can vividly see the contrasts between Hobbes and Aristotle on the topic of justice and equality. While the end result in Hobbes' theory is the same as Aristotle's, it is the fashion in which each goes about at reaching his conclusions that lead to marked differences between them.

John Rawls' essay, "Justice a Fairness", is considered a pivotal point in the book by Mr. Bedau. According to Bedau, the central issues of the nature of justice and equality and their relation are reflected in the first four essay. But oddly enough Rawls only makes mention of Hume and Mill in his writing while making no comment upon Aristotle or Hobbes. The next selection by Barry is a critique of Rawls' essay.

The final four essays serve as a broad appraisal of the current status and vicissitudes of equalitarianism. Mr. Bedau in the final essay discusses the chief ideas which make up equalitarianism.

SUCCESSFUL TECHNIQUES FOR CRIMINAL TRIALS. By F. Lee Bailey and Henry B. Rothblatt. Rochester, New York: The Lawyers Co-operative Publishing Company. 1971. Pp. 625. $35.00.

Messers Bailey and Rothblatt have prepared an extensive guide to the many techniques used in criminal trial work. The book is a tremendous tool for both the novice attorney and the law student who aspires to become a successful criminal attorney. The authors aptly take the reader from "The Arrest, Confinement and Preliminary Hearings" in chapter one all the way through to the "Judgement and Sentence" in chapter twenty-one. Some of the other topics covered in the text are: "Arraignment and Pleas," "The Jury," "Opening Statement to the Jury," "Presenting Your Defense," "Objections to Motions," "The Main argument in Summation," "Attacking Prosecution's Case in Summation," and "The Charge to the Jury."

Chapter six is divided into six subsections of which the last, "Cross Examining Different Types of Witnesses," is superbly treated. The authors cover some twenty-one different areas pertaining to cross-examination of witnesses, many of which a law student may never encounter through an evidence cause while attending law school.

In chapter twenty-two, the last chapter of the book the authors set forth the procedures used in trying a military case. The information contained in it should make it possible even for those with no experience in court martial trials to defend a client in the military. A comprehensive body of military criminal law is contained in this chapter, complete with statutes, regulations and case citations.